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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1009

DUNLOP HOLDINGS LIMITED, *Petitioner*

v.

RAM GOLF CORPORATION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered on October 20, 1975, in Appeal No. 74-2024 entitled *Dunlop Holdings Limited* v. *Ram Golf Corporation*.

OPINIONS BELOW

The opinion of the Court of Appeals, reprinted as Appendix A (pages 1a-8a), is reported at 524 F.2d 33 and 188 U.S.P.Q. (7th Cir. 1975). The unreported Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, dated November 8, 1974, is reprinted as Appendix B (pages 9a-20a). The amendatory Minute Order of the District Court, dated November 18, 1974, is reprinted as Appendix C (page 21a).

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit [Appendix A] was entered on October 20, 1975.

The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1) and 2101(c).

QUESTIONS PRESENTED

The Patent Act of 1952 (35 U.S.C. §§ 1 et seq) authorizes the grant of a patent for an invention unless "the invention" is anticipated in one of the several ways enumerated in § 102 or is "obvious" within the meaning of § 103. Nearly ten years ago this Court, in *Graham* v. *John Deere Co.*, 383 U.S. 1, extensively defined the concept of "obviousness" for purposes of § 103. The present case presents the following questions concerning certain of the equally important and indeed critical conditions for patentability under § 102:

1st Question

What standard should the Patent Office and the courts apply in determining whether the "invention" of a patent is anticipated within the meaning of § 102,

where prior to the critical date of the patent the only earlier work relied upon for anticipation under § 102 was deliberately carried out under conditions of utmost secrecy, and resulted in a relatively few articles of manufacture (Surlyn-covered golf balls) whose key secret (the chemical composition of the cover) was not made known to the public prior to the critical date of the patent—and even more importantly, *could not have been discovered* by the public prior to that critical date?

2nd Question

Does an article of manufacture which even the court below acknowledged to be "a noninforming public use," and which in fact prior to the critical date of the patent was a *noninformable* public use, constitute anticipation of a patent under § 102?

3rd Question

Where it is the patentee who in good faith first initiated the steps necessary to place "an invention" in the possession of the public in the sense of reproducibility at will, is the earlier work of another carried out under conditions of utmost secrecy for admittedly purely selfish reasons, and resulting only in a relatively few articles of manufacture that were not analyzed, and prior to the critical date of the patent could not have been analyzed by the public so as to reveal the key secret, sufficient to anticipate a patent under § 102?

4th Question

Having regard to the paramount Constitutional purpose of promoting the progress of science and useful arts, which one is entitled to sympathetic treatment by the Patent Office and the courts: he who in good

faith first initiated the steps necessary to place an invention in the possession of the public by filing a patent application in the regular way that fully discloses the invention, or he who did some work somewhat earlier but for purely selfish reasons worked under conditions of utmost secrecy and produced only a relatively few articles of manufacture that were not analyzed, and indeed could not have been analyzed by the public so as to reveal the key secret, prior to the critical date of the patent?

STATUTORY PROVISIONS INVOLVED

In pertinent part, the following portions of the Patent Act of 1952 are involved in this petition:

> 35 U.S.C. § 102. CONDITIONS FOR PATENTABILITY; NOVELTY AND LOSS OF RIGHT TO PATENT.
>
> "A person shall be entitled to a patent unless—
>
> "(a) the invention was known or used by others in this country . . . before the invention thereof by the applicant for patent, or
>
> "(b) the invention was . . . in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
>
> . . . .
>
> "(g) before the applicant's invention thereof the invention was made in this country by another who had not . . . . suppressed, or concealed it . . .".

STATEMENT OF THE CASE

This is a patent infringement action brought in September of 1972 by the petitioner, Dunlop Holdings Limited ("Dunlop"), against the respondent, Ram Golf Corporation ("Ram").

In March of 1974 the district court granted Ram's motion [under F.R.C.P. 42(b)] for a separate trial of Ram's three defenses under 35 U.S.C. § 102 of alleged "prior invention," "public use" and "on sale".

Following that separate trial, the district court on November 8, 1974 entered a Memorandum Opinion and Order (App. B), including findings of fact and conclusions of law, in which it found Dunlop's patent "void" on the basis that Ram had established its §102(g) "prior invention" defense.

Following timely appeal by petitioner from the resulting dismissal of the action, the court of appeals affirmed the decision of the district court [App. A].

The patent in suit, Patent No. 3,454,280, entitled "Golf Balls Having Covers of Ethylene—Unsaturated Monocarboxylic Acid Copolymer Compositions", issued July 8, 1969.

Dunlop researchers, working in England, discovered sometime prior to February 10, 1965,[1] that certain copolymers alone or in admixture with minor amounts of compatible materials, e.g., titanium dioxide, when fabricated into a cover and molded onto a golf ball core, produce a golf ball with exceptional cut resistance. A so-called ionic form of such a copolymer derived from ethylene and methacrylic acid is made commercially by duPont, and sold under its trademark

[1] In view of the provisions of 35 U.S.C. § 104 applicable to inventions made abroad, petitioner is precluded from establishing an actual date of invention prior to its February 10, 1965 British application priority date. This date is referred to herein as the "critical date" of the Dunlop patent in suit.

"Surlyn". The copolymers *per se* were invented earlier by duPont, not Dunlop.

After the Dunlop invention was made and a British patent application was filed thereon on the critical date, practically every major golf ball manufacturer in the United States placed on the market at least one line of golf balls purporting to have Surlyn covers. Many millions of such golf balls have been marketed since the grant of the patent in suit. Respondent Ram was the first major golf ball manufacturer to begin making and selling (in 1967) a Surlyn-covered golf ball in the United States.

Petitioner's patent was held invalid under 35 U.S.C. § 102, based on certain West Coast activities of an individual named Leland B. ("Butch") Wagner. Butch died on October 7, 1965, and therefore long before this controversy arose.

In 1964 and for many years prior thereto, Butch was engaged in a business, Metropolitan Golf Ball, Inc., which he founded and which made golf balls for miniature golf courses and driving ranges, as well as rebuilt golf balls and novelty golf items.

Butch's earliest golf ball-related activities with Surlyn occurred in Santa Monica, California, commencing sometime after April of 1964 when DuPont first shipped Surlyn to the Los Angeles area.

In 1964, Metropolitan was making and selling golf balls for miniature golf courses having covers made from polyethylene. Metropolitan bought those covers from Mercury Plastics, Inc., a plastics molding company also located in Santa Monica.

At some undisclosed date, Butch began experimenting with a variety of different polymers in attempts (a) to produce a new golf ball having a one-piece or so-called "solid" construction and (b) to produce a new golf ball having an improved tougher cover.

Pursuant to those objectives, Butch recorded a series of experimental formulae and the results of his experiments (numbered seriatim) in an undated and unsigned formula book which he kept locked-up. He deliberately kept his formulae secret. One of his formulae, the so-called "production formula" written on a separate slip of paper dated 11/5/64, was given to his daughter Madalyn (who was closely associated with the business side of Butch's activities) for safekeeping. Of the approximately six dozens of Butch's formulations that were introduced in evidence, this separate slip of paper was the only formulation bearing a date, and had no counterpart in the formula book.

During the course of his activities, Butch called upon certain old-time friends to assist him in testing his golf balls. None were ever told or knew anything about the particular material(s) used in any particular golf ball. Some golf balls were allegedly sold to friends and business acquaintances, but no documentary evidence (e.g., invoices, cash journal entries) of any sales of Surlyn-covered golf balls *before* the critical date of the Dunlop patent was ever produced. Strangely enough, however, plenty of documentary evidence of sales *after* the critical date turned up.

Be that as it may, Butch's alleged invention was in any event very effectively "suppressed or concealed" (to quote § 102(g) of the Patent Act) before the critical date of the Dunlop patent. As uncontroverted

evidence of Butch's veritable obsession with secrecy, one may note by way of example the following testimony appearing in the record:

Bob Wagner: (Butch's son) "The name Surlyn was never mentioned because my father didn't want anyone to know we were using Surlyn."

"He was very secretive about it. . ."

"It was a word completely obliterated from the English language."

Madalyn Brickner: (Butch's daughter) "Everybody was instructed not to reveal that information [about Surlyn]. That was a no-no. My father's theory was if you patent a product, like if he had patented that, for two or three dollars, anyone could get a copy of the patent, change one ingredient or add one ingredient, and they've got your formula."

Stuart Elliott: (Former Vice President and General Manager of Mercury Plastics, a concern that did custom molding for Butch) "Now, Surlyn was a dirty word with Butch. He did not mention Surlyn and I really mean this. Not even in conversation, you know."

"As well as he knew me, if in a conversation with nobody around even, if I should happen to mention Surlyn, I think Butch would have just thrown a fit, you know. He was secretive with it."

Dr. Fredericks: (An old friend and golfing companion of Butch) "Bob may have known what his father [Butch] was working with, but the exact formulae, they didn't know."

William Rhodes: (President and Owner of Mercury Plastics) "And what else he [Butch] put in it and when he got it milled and what he did with it, he wouldn't even tell me and I was just like a son to him. . ."

In addition, the following items appearing in the record serve still further to highlight Butch's hard and fast intention to suppress or conceal his alleged invention:

1. Butch deliberately decided not to file a patent application—since that, upon issuance as a patent, would automatically result in disclosure to the public.

2. Butch instructed his business associates to deliberately mislead duPont upon inquiry by duPont into believing that the Surlyn obtained from duPont was being used for entirely non-related purposes (e.g., salt-and-pepper-shaker liners).

3. Butch used the device of a separate corporation, Golden State Distributors, of which his daughter Madalyn was a dominant figure, in a successful effort to disassociate the name "Surlyn" from his company Metropolitan Golf Ball, Inc.

4. Butch used a code known only to him to distinguish the golf balls prepared from his various formulae.

5. Butch participated in the subterfuge of filing, or causing to be filed, a trademark application in the United States Patent Office for the registration of the mark "Tuf-Flex" for his new golf balls, in the name of Golden State Distributors via his daughter Madalyn, instead of in the name of his own company Metropolitan Golf Ball, Inc.

6. Butch did not permit even his closest associates at Mercury Plastics (who injection-molded golf ball covers for Butch) to know what additional ingredients and what amounts thereof were used in his various formulations.

7. Butch did not disclose even to his own son, Bob, some of his key activities, e.g., his Topanga Canyon work with polyurethane-containing golf ball covers.

Butch apparently realized[2] that even making his golf balls available to the public would not enable anyone else to learn that Surlyn was being used in the cover—much less learn the complete formulation.

Butch's earlier work was not only "noninforming," as rightly observed by the court below, but in fact it was *noninformable*. This is clearly established by the following items of record:

(A) Terry Pocklington, an important Ram employee and one whom Ram regards as *one of the world's foremost authorities* on golf ball construction, at some date later than February 10, 1965—and even after having had the advantage of independent first-hand knowledge based on working with samples of Surlyn obtained directly from duPont and therefore knowing its properties—concluded that the golf balls placed on the market by Butch under the "Tuf-Flex" trademark (*after* Dunlop's critical date) had a cover made from some other polymeric material which he identified as "probably[3] ethylene-vinyl acetate co-

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[2] Butch's belief in this respect was apparently based, at least in part, upon an incident with an experienced research chemist and close family friend, Mr. Spieth, who, at some unspecified date during Butch's experiments and at Butch's request, attempted to determine by infrared analysis (IR) something about the chemical structure of a specimen of an unidentified material Butch supplied in confidence. Spieth failed: "I never identified it as anything like Surlyn . . . I did not even know what it was . . . I'd never seen anything like that before . . . I knew some things it wasn't, that's all . . .", said Mr. Spieth during his deposition.

[3] Surlyn is an entirely different kind of copolymer. As indicated above, it is in fact an ionically cross-linked form of an ethylene-methacrylic acid copolymer.

polymer"! Approximately two years had to elapse before Mr. Pocklington could finally arrive at the conclusion that those covers were Surlyn covers.

(B) Roy H. Kinsey, *duPont's* expert on the chemistry and marketing of Surlyn, agreed that the public could not have ascertained with certainty the chemical nature of Surlyn until some time in April of 1965 (some two months *after* the critical date of the Dunlop patent) when for the first time duPont made public at a Chemical Society meeting the infrared spectograph (I.R. trace) of Surlyn which, to the chemist, is the "fingerprint" of a material such as Surlyn.

(C) The abortive attempt at analysis by Butch's research chemist friend, Mr. Spieth. See footnote 2 on p. 10, *supra*.

REASONS FOR GRANTING THE WRIT

1. This Case Provides an Excellent Vehicle for the Court To Undertake for the First Time a Much-Needed Interpretation of Section 102 of the Patent Act of 1952

The Patent Act of 1952 (35 U.S.C. §§ 1 *et seq.*) continues to be a cornerstone of the law designed for the purpose of spurring invention and economic development in the United States. Yet only on rare occasions has that Act received authoritative construction by this Court. The Court has never provided the Patent Office and lower courts with an in-depth interpretation of § 102 which outlines one of the two major tests for patentability under the Act.

This case presents an unusually good opportunity for the Court to undertake such an interpretation, with particular reference to the effect on the validity of a later patent of the earlier work of another who adopted

the most extreme measures (successfully) to draw a tight veil of secrecy over that work, and where the work itself prior to the patentee's critical date of invention resulted only in the production of a relatively few articles of manufacture that even the court below referred to as "a noninforming public use".

In *John Deere*,[4] the Court made a valuable contribution to patent jurisprudence by setting forth with clarity and precision the tests for obviousness to be applied under 35 U.S.C. § 103, which embodies the other major test for patentability under the Patent Act of 1952. The Court has never done the same with respect to the equally important provisions of § 102.[5]

Section 102 provides that a person shall be entitled to a patent unless:

> "(a) the invention was *known* or *used* by others . . . before the invention thereof by the applicant . . .; or
>
> "(b) the invention was . . . *in public use or on sale* . . . more than one year prior to the date of the application for patent . . .; or
>
> . . . .
>
> "(g) . . . the invention was *made* in this country *by another who had not . . . suppressed*, or *concealed* it [before the applicant's invention]." (Emphasis added)

These concepts underlie the all-important doctrine of "anticipation" in patent jurisprudence. Interpre-

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[4] *Graham* v. *John Deere Co.*, 383 U.S. 1 (1966).

[5] Although *U. S.* v. *Adams*, 383 U.S. 39 (1966), refers to § 102, *Adams* was decided simultaneously with *John Deere* and dealt primarily with § 103.

tations of the words "the invention", "known", "used", "in public use", "on sale" and "made by another who had not . . . suppressed or concealed it" are found in many lower court opinions. But their proper individual meanings and relationships with one another have never received the concentrated attention of this Court since their incorporation into the current Patent Act.

Moreover, the antecedents of those words in earlier patent statutes have never been considered by this Court in the present context, viz., earlier work by another deliberately shrouded in secrecy and culminating in a relatively few articles of manufacture that were not—and could not have been—analyzed by the general public prior to the patentee's critical date of invention, in the realistic sense of thereby making "the invention" available to the public for reproduction at will.

2. This Court Should Provide Clear Guidelines for the Lower Courts and the Public in Patent Cases Where Allegedly Anticipatory Subject Matter Was Not Only Deliberately Maintained in Utmost Secrecy but Also by Its Very Nature Was Not Discovered—and Could Not Have Been Discovered—by the General Public Prior to the Critical Date of the Patent

This case squarely presents the issue of the effect of earlier work on the validity of a later patent where information concerning the nature of that earlier work was deliberately withheld from the public ("suppressed or concealed") and where the work resulted in articles of manufacture (the Surlyn-covered golf balls) that not only were "a noninforming public use," as even the court below rightly recognized, but even more

importantly from the practical viewpoint, were a *non-informable* public use.

Respondent Ram did not and could not deny that prior to the critical date of petitioner's patent (February 10, 1965) the general public did not—and indeed could not—have analyzed the cover of Butch's Surlyn-covered golf balls and thereby determine its chemical composition. If there were any doubt on this point, it would be dispelled by the testimony of Roy H. Kinsey, duPont's expert on the chemistry and marketing of Surlyn, who agreed that the nature of Surlyn could not have been ascertained with certainty by the general public until sometime in April of 1965—some two months *after* petitioner's critical date—when duPont *first* publicly revealed to chemists at a Chemical Society meeting an infrared trace or spectrograph of Surlyn which, to the organic chemist, corresponds to a "fingerprint" of the material.[6]

In *Tilghman* v. *Proctor,* 102 U.S. 707 (1880), this Court referred to the earlier work of another which was asserted to be an anticipation of a later patent, in the following manner:

> "If the acids were accidently and unwittingly produced, whilst the operators were in pursuit of other and different results, without exciting attention and without its even being known what was

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[6] Butch's longtime friend and golfing companion, Howard E. Spieth, a chemist experienced in infrared analysis, tried to determine the nature of the cover material *and failed.* Terry Pocklington, successively Plant Chemist, Director of Research and Development, and Plant Manager for respondent Ram, tried *and failed*—and this despite his identification by one of Ram's vice-presidents as "probably the foremost golf ball authority as far as I am concerned at that time and probably still feel the same today, available in the world."

> done *or how it had been done*, it would be *absurd* to say that this was an anticipation of Tilghman's discovery." [p. 711-712] [Emphasis added]

Here only Butch had in his possession prior to the critical date of petitioner's patent the knowledge of "how it had been done," and this knowledge was kept by Butch as a closely guarded secret.

It would be harder to imagine a more logical analogy than that existing between the accidental and unwittingly produced results of the kind referred to in *Tilghman* on the one hand and the "noninforming public use"—and indeed *noninformable* use—of the present case on the other.

The lower courts and the Patent Office badly need the guidance of this Court on this very important point.

Footnote 13 of the opinion of the court below [App. A at 8a] illustrates how the lower courts completely missed the important issue in this case. The court below remarked that it would not be unreasonable to assume that competing manufacturers of golf balls in search of a tough new material to be used as a cover might make inquiries of Butch Wagner's Surlyn supplier that would soon reveal his secret ingredient. What *escaped* the court below was the key point that this was precisely at the very heart of Butch's (successful) obsession with secrecy. Not only was Butch not about to tell members of the general public *where* he obtained the key material for his golf ball covers, but on the contrary he went to elaborate lengths (a) to buy the key material from duPont through third parties so that he and his company would have no known connection with Surlyn; (b) to fend off inquiries by duPont as

to what the key material was being used for by deliberately misinforming duPont that it was being used for other and wholly unrelated purposes (e.g., salt-and-pepper-shaker liners); and (c), shortly after the petitioner's critical date, to cause application for registration of a trademark on his golf balls to be filed in the U.S. Patent Office in the name of another company of which his daughter Madalyn was an officer.

Thus, while one cannot deny in principle the further observation of the court below (at the very end of the footnote in question) to the effect that duPont certainly had a motive to expand the market for Surlyn, nevertheless this could not have been done through any assistance that anyone received or could have expected to receive from Butch.

As in *Gayler* v. *Wilder,* 10 How. (51 U.S.) 477 (1850), the public did not learn anything about the invention from Butch's earlier work, in the sense of having the invention placed at its disposal for reproduction at will. See pp. 497-8. Having available a relatively few golf balls with covers of an unknown—and, prior to petitioner's critical date, *unknowable*—composition was certainly not equivalent to the public's having "the invention" within any reasonable meaning of § 102.

This Court should take this case with a view to settling this highly important point of patent jurisprudence.

What should have been the governing principle was aptly stated in *Kendall* v. *Winsor,* 21 How. (62 U.S.) 322 (1858). There this Court cogently observed that the "inventor" who purposely withholds his invention

from the public for his own selfish purposes is entitled to little sympathy:

> "He does not promote, and, if aided in his design, would impede, the progress of science and the useful arts" [p. 328].

While it is true that the Court in *Kendall* immediately went on to state that

> "[m]oreover, that which is once given to or is invested in the public, cannot be recalled nor taken from them",

it makes no sense whatsoever to suppose that the result of Butch's work here was to "give to" or "invest in" the public the invention here involved. The record clearly establishes that *at no time prior to petitioner's critical date* could a member of the general public have analyzed the cover composition of Butch's golf balls and thereby arrive at knowledge of how to make it. The public was not informed as to how to go about making the golf balls.

The lower courts, as well as inventors and those who invest in the development of new technology, stand badly in need of the expert guidance of this Court in the respects revealed by the facts of the present case.

In sum, the court below fell into highly prejudicial error by overlooking the Constitutional and Congressional intent of "promoting the progress of science and useful arts" (Constitution, Article I, Section 8, Clause 8). That error followed because the lower court, in effect, unjustly rewarded Butch Wagner (and those defending under him) despite his obsession or mania for preserving in utmost secrecy his work with

Surlyn-covered golf balls for as long[7] as he possibly could, as against petitioner who was the first to initiate in good faith the steps necessary to place the invention in the possession of the public within the contemplation of the Constitution and the Patent Act of 1952.

The record makes it abundantly clear that Butch Wagner and his associates would—if they could—have maintained the secret of their Surlyn-covered golf ball *forever,* rather than making their work available for the full use and enjoyment of the public in any practical sense.

This is in direct contravention of the intent of the Congress and should have negated any tendency the court below might otherwise have felt in displaying such unwarranted *tendresse* toward Butch. Butch's sole concern was to promote the progress of Butch and *not* to promote the progress of science and useful arts.

The Court should take this case in order to make a definitive ruling on this important underlying issue.

3. By Agreeing To Provide Much Needed Guidelines for Situations Involving the Difficult and Important Question Presented by the Present Case, This Court Could Go Far To Dispel the Fear in Many Quarters that the Court is "Anti-Patent"

Like the little boy in the story of "The Emperor's New Clothes", perhaps the time has come for someone to come right out and say that the view is widely held in many sectors of the community of inventors (and those associated professionally with them) that a defi-

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[7] Indeed, his son Bob testified that he and his company Metropolitan did not reveal their secret to the public until 1969, some four years later.

nitely "anti-patent" attitude is displayed by the courts [8] in general, and perhaps by this Court in particular. That view, frankly, was significantly strengthened a few years ago when this Court handed down its landmark decision in *Blonder-Tongue* [9] seeming, in effect, to hold for the first time in the history of patent jurisprudence in this country that a very serious kind of estoppel was a "one-way street" working essentially always in favor of the infringer and *against* the patentee. The equitable concept of mutuality in such matters was completely thrust aside.

To grant certiorari in the present case would help to bring about the happy thought that this Court is prepared to project a relatively benevolent attitude [10] toward the Patent System that might be very much like that which must have prevailed in this country long ago—an attitude of understanding and sympathy for the Patent System bred in the apostolic age of the early days of our country when judges and counsel

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[8] Unfortunately, the question of such an attitude is not simply mere rhetoric on the part of a disappointed litigant. No less an authority than a judge of the United States Court of Customs and Patent Appeals recently voiced essentially the same question. See [Associate Judge] Giles S. Rich, "How Systematic is the Patent System", 57 J. Pat. Off. Soc. 696 (November 1975) at 704: "Is the [Federal] judiciary . . . prejudiced against patents . . .?' Judge Rich will of course be recognized as one of the nation's most distinguished patent jurists, and without question the most experienced.

[9] *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation et al*, 402 U.S. 313 (1971).

[10] True, the Court did make a rather complimentary remark about the Patent System as recently as 1954, but at no great "cost." This was in *Mazer* v. *Stein*, 347 U.S. 201 (1954), which was a *copyright* case. See p. 219.

breathed the air of the Constitution at a time when it still imparted everywhere its initial energy and spirit. A time, in short, when Mr. Justice Story—surely one of the greatest jurists ever to adorn the bench of this Court—could remark in passing:

> "The securing to inventors of an exclusive right to their inventions, was deemed of so much importance, as a means of promoting the progress of science and the useful arts, that the constitution has expressly delegated to Congress the power to secure such rights to them for a limited period. The inventor has, during this period, a property in his inventions; a property which is often of very great value, and of which the law intended to give him the absolute enjoyment and possession. . . . It is not lightly to be presumed, therefore, that Congress, in a class of cases placed peculiarly within its patronage and protection, involving some of the dearest and most valuable rights which society acknowledges, and the constitution itself means to favour, would institute a new and summary process, which should finally adjudge upon those rights, without a trial by jury, without a right of appeal, and without any of those guards with which, in equity suits, it has fenced round the general administration of justice." [*Ex parte Wood & Brundage,* 9 Wheat. (22 U.S.) 603 (1824) at 608].

CONCLUSION

Petitioner respectfully urges the Court to hear and resolve the important issue in this case by issuing a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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